

IN THE COURT OF COMMON PLEAS OF DEFIANCE COUNTY, OHIO

Armon R. Helton, et.al.

Plaintiffs

: Case No. 01-CV-35004

-vs-

FILED
IN COURT OF COMMON PLEAS
DEFIANCE COUNTY, OHIO

Ryan S. Young, et.al.

JUN 18 2003

OPINION and
JUDGMENT ENTRY

Defendants

Jean Ziegler
CLERK

This cause came on for consideration of cross-motions for summary judgment filed on behalf of Plaintiff, Demond Haynes, and Defendants, General Motors Corporation and National Union Fire Insurance Company of Pittsburg. At issue is the availability of uninsured/underinsured motorists coverage in favor of Mr. Haynes as a result of his father's employment at General Motors. National Union had issued fully-fronted commercial liability policies to G.M. as part of G.M.'s risk management program. The parties have extensively briefed the issues citing, it appears, every possible authority bearing on the case. The court will not attempt, here, to reiterate the arguments and authorities cited. Suffice it to say that there exists no genuine issue of material fact and disposition as a matter of law is appropriate.

The court acknowledges the broad scope of authority cited, however, Hellman v. Motorists Mutual Insurance Co. 2003-Oh 2672 (Putnam May 23, 2003) cited as supplemental authority, is dispositive. In Hellman, as in the instant case, the employer through which Scott-Pontzer coverage was sought, was "self-insured in the practical sense" and therefore not required to meet the statutory requirements of R.C. 3937.18. In the instant case, General Motors Risk Management plan incorporates fully-fronted policies administered by National Union. G. M. is clearly "self-insured in the practical sense". Hellman decided by our Third District Court of Appeals is dispositive and General Motors and National Union Fire Insurance Company of Pittsburgh, Pennsylvania are entitled to judgment as a matter of law.

Notwithstanding Hellman, it appears to the court that the weight of other authority would require a similar result. A specific alternative basis for the determination that Scott-Pontzer coverage is unavailable to the Plaintiff in the instant case results from choice of law analysis under Ohayon v. Safeco Ins. Co. of Ill., 747 N. E. 2d 819 (S.D. Ohio 2001) as applied in Rutlin v. National Union Fire Ins. Co. of Pittsburgh, PA., 2003 U.S. Dist. LEXIS 6928 (S.D. Ohio April 22, 2003). In Rutlin, the Federal Court analyzed G.M.'s fronting program and choice of law issues under Ohayon. Rutlin determined that Michigan law which expressly rejects the Scott-Pontzer rationale would apply and, even if Ohio law were

applicable, the practical equivalent of self-insurance created by General Motors' fronting policies prevents the application of R.C. Section 3937.18 to the case at barr.

Based on the foregoing, it is apparent that the motions for summary judgment filed on behalf of Defendants, General Motors and National Union Fire Insurance Company of Pittsburg, Pennsylvania, are well taken and must be granted while Plaintiffs cross-motion is without merit.

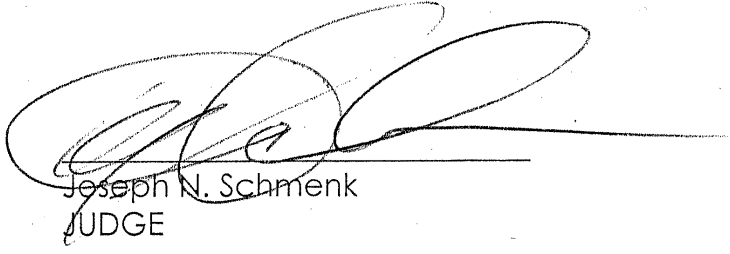
It is therefore ORDERED, ADJUDGED and DECREED that:

- (1) The claims of Plaintiff, Demond A. Haynes, as against Defendant, General Motors Corporation and Defendant, National Union Fire Insurance Company of Pittsburg, PA, are hereby dismissed, with prejudice; and
- (2) Costs to the Plaintiff, Demond A. Haynes.

It appearing that the foregoing decision adjudicates fewer than all claims or rights and liabilities of fewer than all of the parties, pursuant to Civil Rule 54(B), the court determines that there exists no just reason for delay and final judgment is entered in favor of Defendants, General Motors and National Union Fire Insurance Company of Pittsburg, PA and against Plaintiff. It is the intention of the court that this be a final, appealable order.

TO THE CLERK:
Serve all parties with
Notice and Date of this
Judgment per the provisions
of CIV.R. 5(B)

JUDGE


Joseph N. Schmenk
JUDGE

cc: The Bolotin Law Offices
By: Samuel G. Bolotin &
Dee Harrinton
4349 Talmadge Road
Toledo, Ohio 43623-3565
Attorney for Plaintiff

Robison, Curphey & O'Connell
By: Daniel G. Hazard
Ninth Floor, Four SeaGate
Toledo, Ohio 43604
Attorney for Defendant,
American Commerce Ins.

~~Zeiger & Carpenter LLP~~
By: Darren L. Nealy &
Daniel r. Mordarski
1600 Huntington Center
41 South High Street
Columbus, Ohio 43215
Attorney for Defendant,
General Motors Corporation

Janik & Dorman, L.L.P.
By: Matthew J. Grimm
9200 South Hills Blvd., Suite 300
Cleveland, Ohio 44147
Attorney for Defendant, National
Union fire Ins. Co. of Pittsburg, PA

Voyrs, Sater, Seymour and Pease LLP
By: Marguettes D. Robinson
2100 One Cleveland Center
1375 East Ninth Street
Cleveland, Ohio 44114-1724
Attorney for Intervening Plaintiff,
Community Ins. Co.,
d/b/a Anthem Blue Cross and Blue Shield

Ryan S. Young
2113 Brookhaven Dr.
Lima, Ohio 45805

Mia Young
459 Pontiac Drive, Apt. C
Defiance, Ohio 43512